

June 30, 1967

STATE ROAD COMMISSION OF UTAH
442 STATE CAPITOL
SALT LAKE CITY, UTAH

STANDARD PROVISIONS FOR GENERAL LIABILITY POLICIES

RAILROAD PROTECTIVE LIABILITY FORM
(State or Federal Highway Projects)

Including Instructions for
Preparation of Policies by Companies

Endorsed by
The Executive Committee
of the
AMERICAN ASSOCIATION OF STATE HIGHWAY OFFICIALS

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STANDARD PROVISIONS FOR GENERAL LIABILITY POLICIES

Railroad Protective Liability Form

(State or Federal Highway Projects)

GENERAL INSTRUCTIONS

1. Standard Language

This form is expressed in standard language which may not be amended and no part of which may be omitted except (a) as indicated by these instructions, or (b) as indicated in reference notes shown below referring to specific portions of the form, or (c) by an endorsement which states an amendment or exclusion of some provision of the form in accordance with the provisions of a manual rule, the form of which endorsement has been approved, if required, by the supervising authority of the state in which the policy is issued.

2. Optional Sequence and Arrangement

The several parts of the form, viz. "Insuring Agreements," "Exclusions," "Conditions" and "Declarations" may appear in the policy in such sequence as the company may elect and the sequence and arrangement of the several provisions of those parts are also optional with the company.

3. Descriptive Headings -- Identifying or Indexing Designations

The descriptive headings of the parts of the form (as quoted above) and of the major insuring agreements ("Bodily Injury Liability," "Property Damage Liability," etc.) are standard expressions which may not be amended or omitted, but all other identifying or indexing designations (such as "Coverage A," "Defense, Settlement, Supplementary Payments," "Cancellation," etc.), including literal or numerical designations or paragraphs or phrases, may be amended or omitted at the company's option. When such identifying or indexing designations, used for the purpose of reference in the text of the form or any endorsement form applicable thereto, are amended or omitted, descriptive designations shall be substituted therefor.

4. Additional Coverages or Companies, Explanatory or Connective Language

When policies are issued to provide insurance in this form together with insurance covering other risks, the addition of necessary explanatory or connective language which does not amend the expression of this form is permissible and the introductory language of the "Insuring Agreements" which provides for the issuance of a policy by two companies may be used and, if necessary, paraphrased to permit such policies to be issued by more than two companies.

5. Declarations -- Including Other Risks

A common set of declarations may be used in those cases where policies in this form are issued with policies covering other risks.

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6. Installment Premium Payment

Policies written to provide for payment of premium in installments may provide for lapse or suspension of the policy upon default of payment when due.

7. Addition of Coverage by Endorsement

When insuring agreements and other provisions relating to any particular class of insurance are added to this policy by endorsement, such additional insurance must be expressed in approved standard language relating to the particular class and must be subject to all standard provisions applicable to that class by the expressions of the endorsement or of the policy or of both taken together.

8. Definition of "Standard" and "Approved"

"Standard Language" or "Approved Standard Language" when used in these instructions means the form and endorsements either prescribed or approved by the insurance supervising authority of the state in which policy forms and endorsements are approved or prescribed. In those states where supervising authorities do not have the authority to approve or prescribe policies, forms and endorsements, the terms mean the forms and endorsements adopted by the companies for use in such states.

9. Premium Statement

The statement with respect to payment of premium may be amended by an endorsement to make necessary provision with respect to payment of premium, payment of additional premium and return of premium (and dividends*) under the policy.

10. Special Conditions for Mutuals, Reciprocals and Participating Stock Companies

When the policy is issued by a mutual company, a reciprocal association or a participating stock company having special provisions applicable to its membership or policyholders, such provisions, when approved by the supervising authority of the state in which the policy is issued if such approval is required, may be inserted in the policy.

* See General Instruction 10

REFERENCE NOTES

1. Matter in brackets may be included, omitted or amended at the option of the company.
2. The effective hour and date of the policy may be typed or printed in this space.
3. A statement may be added that a definite notation may be made in the premium column to show that a particular coverage is not afforded.
4. Name of company may be shown.
5. The capacity of the person countersigning may be stated.
6. Additional declarations of this type, calling for general information or information regarding installation payment of premium, may be used at the option of the company.
7. The name and location of the company are to be stated. The type of the company and the word used throughout the policy suitably to designate the company are to be stated.
8. The language of this paragraph is optional with the company.

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(Company or Companies)

Railroad Protective Liability Policy No. _____
(State or Federal Highway Projects)

DECLARATIONS

Item 1. Name Insured _____

Address _____
(No. Street Town or City County State)

Item 2. Policy Period: From (See Reference No. 2) To _____
12:01 A.M., standard time at the designated job site as stated herein

Item 3. The insurance afforded is only with respect to such of the following coverages as are indicated [in Item 6]
by specific premium charge or charges. The limit of the company's liability against such coverage or cover-
ages shall be as stated herein, subject to all the terms of this policy having reference thereto. (See
Reference Note 3.)

Coverages		Limits of Liability	
Company	4 A Bodily Injury Liability	\$500,000 each person	\$1,000,000 each occurrence
Company	B Property Damage Liability	\$500,000 each occurrence	\$1,000,000 aggregate
	4 & C and Physical Damage to Property		

Item 4. Name and Address of Contractor _____

Item 5. Name and Address of Governmental Authority for whom the work by the contractor is being performed _____

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Item 6. <u>Designation of the Job Site and</u> <u>Description of Work</u>	<u>Premium</u> <u>Bases</u>	<u>Rates</u>		<u>Advance</u> <u>Premiums</u>	
		<u>Coverage A</u>	<u>Coverages B & C</u>	<u>Coverage A</u>	<u>Coverages B & C</u>
	<u>Contract Cost</u>	Per \$100 of Cost			
	<u>Rental Cost</u>	Per \$100 of Rental Cost			

If Policy Period more than one year:

Premium is payable: On effective date of Policy \$ 1st Anniversary \$ 2nd Anniversary \$

Date and Place of Issue _____] 1

Countersigned _____ 19__ , at _____] 1 by _____
(See Reference Note 5.)

A. Renewal of policy number

C. Endorsement serial numbers

B. The named insured is a Corporation.

D. Rating plan or premium discount.

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(For policy issued by one company)

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(Company)

(A _____ insurance company, herein called the company) 7

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations made by the named insured and subject to all of the terms of this policy:

(For policy issued by two companies)

, and
(Company)

(Company)

(Each a _____ insurance company, herein called the company) 7

Severally agree with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations made by the named insured and subject to all of the terms of this policy, provided the _____ Indemnity Company shall be the insurer with respect to coverage _____ and no other and the _____ Insurance Company shall be the insurer with respect to coverage _____ and no other:

INSURING AGREEMENTS

1. Coverage A - Bodily Injury Liability

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness, or disease, including death at any time resulting therefrom, hereinafter called "bodily injury," either (1) sustained by any person arising out of acts or omissions at the designated job site which are related to or are in connection with the work described in Item 6 of the Declarations, or (2) sustained at the designated job site by the contractor or any employee of the contractor, or by any employee of the governmental authority specified in Item 5 of the Declarations, or by any designated employee of the insured, whether or not arising out of such acts or omissions.

Coverage B - Property Damage Liability

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of physical injury to or destruction of property, including loss of use of any property due to such injury or destruction, hereinafter called "property damage," arising out of acts or omissions at the designated job site which are related to or are in connection with the work described in Item 6 of the declarations.

Coverage C - Physical Damage to Property

To pay for direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment, or motive power equipment hereinafter called loss, arising out of acts or omissions at the designated job site which are related to or are in connection with the work described in Item 6 of the declarations; provided such property is owned by the named insured or is leased or entrusted to the named insured under a lease or trust agreement.

II. Definitions

- (a) Insured - The unqualified word "insured" includes the named insured and also includes any executive officer, director or stockholder thereof while acting within the scope of his duties as such.
- (b) Contractor - The word "contractor" means the contractor designated in Item 4 of the declarations and includes all subcontractors of said contractor but shall not include the named insured.
- (c) Designated employee of the insured - The words "designated employee of the insured" mean:
 - (1) Any supervisory employee of the insured at the job site,
 - (2) Any employee of the insured while operating, attached to or engaged on work trains or other railroad equipment at the job site which are assigned exclusively to the contractor, or
 - (3) any employee of the insured not within (1) or (2) who is specifically loaned or assigned to the work of the contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the contractor or by governmental authority.
- (d) Contract - The word "contract" means any contract or agreement to carry a person or property for a consideration or any lease, trust or interchange contract or agreement respecting motive power, rolling stock or mechanical construction equipment.

III. Defense, Settlement, Supplement, Supplementary Payments

With respect to such insurance as is afforded by this policy under coverages A and B, the company shall:

- (a) Defend any suit against the insured alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient;

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(b) pay, in addition to the applicable limits of liability;

- (1) all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;
- (2) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, but without obligation to apply for or furnish any such bonds;
- (3) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of the occurrence;
- (4) all reasonable expenses, other than loss of earnings, incurred by the insured at the company's request.

IV. Policy Period, Territory

This policy applies only to occurrences and losses during the policy period and within the United States of America, its territories or possessions, or Canada.

EXCLUSIONS

This policy does not apply:

- (a) To liability assumed by the insured under any contract or agreement except a contract as defined herein;
- (b) To bodily injury or property damage caused intentionally by or at the direction of the insured;
- (c) To bodily injury, property damage or loss which occurs after notification to the named insured of the acceptance of the work by the governmental authority, other than bodily injury, property damage or loss resulting from the existence or removal of tools, uninstalled equipment and abandoned or unused materials;
- (d) Under coverages A (1), B and C, to bodily injury, property damage or loss, the sole proximate cause of which is an act or omission of any insured other than acts or omissions of any designated employee of any insured;

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- (e) Under Coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits' law, or under any similar law; provided that the Federal Employers' Liability Act, U. S. Code (1946) Title 45, Sections 51-60, as amended, shall for the purposes of this insurance be deemed not to be any similar law;
- (f) Under Coverage B, to injury to or destruction of property (i) owned by the named insured or (ii) leased or entrusted to the named insurer under a lease or trust agreement.
- (g) 1. Under any Liability Coverage, to injury, sickness, disease, death or destruction
 - (a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- 2. Under any Medical Payments Coverage, or under any Supplementary-Payments provision relating to immediate medical or surgical relief to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- 3. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
 - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, material, parts or equipment in

connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

4. As used in this exclusion:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste.

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

CONDITIONS

The conditions, except conditions 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 apply to all coverages. Conditions 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 apply only to the coverage noted thereunder. 1.

1. Premium The premium bases and rates for the hazards described in the declarations are stated therein. Premium bases and rates for hazards not so described are those applicable in accordance with the manuals in use by the company.

The term "contract cost" means the total cost of all work described in Item 6 of the declarations.

The term "rental cost" means the total cost to the contractor for rental of work trains or other railroad equipment, including the remuneration of all employees of the insured while operating, attached to or engaged thereon.

The advance premium stated in the declarations is an estimated premium only. Upon termination of this policy the earned premium shall be computed in accordance with the company's rules, rates, rating plans, premiums and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the company shall look to the contractor specified in the declarations for any such excess; if less, the company shall return to the said contractor the unearned portion paid.

In no event shall payment of premium be an obligation of the named insured.

2. Inspection The named insured shall make available to the company records of information relating to the subject matter of this insurance.

The company shall be permitted to inspect all operations in connection with the work described in Item 6 of the declarations.

3. Limits of Liability The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence; the limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provisions respecting each person, the total limit of the company's liability for all such damage arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

4. Limits of Liability The limit of liability under Coverages B and C stated in declarations as applicable to "each occurrence" is the total limit of the company's liability for all damages and all loss under coverages B and C combined arising out of physical injury to, destruction or loss of all property of one or more persons or organizations, including the loss of use of any property due to such injury or destruction under Coverage B, as the result of any one occurrence.

Subject to the above provisions respecting "each occurrence", the limit of liability under Coverages B and C stated in the declaration as "aggregate" is the total limit of the company's liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction or loss of property, including the loss of use of any property due to such injury or destruction under Coverage B.

Under Coverage C, the limit of the company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property or such part thereof with other of like kind and quality.

5. Severability of Interests The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.
Coverages A and B
6. Notice In the event of an occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. If claim is made or suit is brought against the insured, he shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.
7. Assistance and Cooperation of the Insured The insured shall cooperate with the company and, upon the company's request, attend hearings and trials and assist in making settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.
Coverages A and B
8. Action Against Company No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.
Coverages A and B

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

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Coverage C No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

9. Insured's Duties in Event of Loss In the event of loss the insured shall:
Coverage C

(a) Protect the property, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request;

(b) file with the company, as soon as practicable after loss, his sworn proof of loss in such form and including such information as the company may reasonably require and shall, upon the company's request, exhibit the damaged property.

10. Appraisal If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after the proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

11. Payment of Loss The company may pay for the loss in money but there shall be no abandonment of the damaged property to the company.
Coverage C

12. No Benefit to Bailee The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee, other than the named insured, liable for loss to the property.
Coverage C

13. Subrogation In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

14. Application of Insurance The insurance afforded by this policy is primary insurance.

15. Three Year Policy A policy period of three years is comprised of three consecutive annual periods. Computation and adjustment of earned premium shall be made at the end of each annual period. Aggregate limits of liability as stated in this policy shall apply separately to each annual period.

16. Changes Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy signed by _____ (here insert titles of authorized company officials or representatives); provided, however, changes may be made in the written portion of the declarations by _____ (here insert titles of authorized company representatives) when initialed by such _____ (here insert titles of authorized company representatives) or by endorsement issued to form a part of this policy signed by such _____ (here insert titles of authorized company representatives).

17. Assignment Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon.

18. Cancellation This policy may be cancelled by the named insured by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the named insured, contractor and governmental authority at the respective addresses shown in this policy written notice stating when not less than thirty days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

19. Declarations By acceptance of this policy the named insured agrees that such statements in the declarations as are made by him are his agreements and representations, that this policy is issued in reliance upon the truth of such representatives and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

(For policy issued by one company)

In witness whereof, the _____ has caused this policy to be signed by its president and a secretary at _____, and countersigned on the declarations page by a duly authorized agent of the company.

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Secretary

President

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(For policy issued by two companies)

In witness whereof, the _____ has
caused this policy with respect to coverages _____ and
such other parts of the policy as are applicable thereto, to be signed by
its president and a secretary at _____, and
countersigned on the declarations page by a duly authorized agent of the
Company.

Secretary

President

In witness whereof, _____ has
caused this policy, with respect to coverages _____ and
such other parts of the policy as are applicable thereto, to be signed
by its president and a secretary at _____, and
countersigned on the declarations page by a duly authorized agent of the
company.

Secretary

President